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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,437	11/16/2000	Lynn Watson	ISD00021	5708

60909 7590 12/03/2009

CYPRESS SEMICONDUCTOR CORPORATION
198 CHAMPION COURT
SAN JOSE, CA 95134-1709

EXAMINER	
STEVENS, THOMAS H	

ART UNIT	PAPER NUMBER
2121	

MAIL DATE	DELIVERY MODE
12/03/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/715,437	WATSON ET AL.	
	Examiner	Art Unit	
	THOMAS H. STEVENS	2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 August 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-17,21 and 22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-17,21 and 22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 15-17, 21 and 22 were examined.

2. Claims 1-14,18-20 were cancelled.

Section I: Final Rejection

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

   1. Determining the scope and contents of the prior art.
   2. Ascertaining the differences between the prior art and the claims at issue.
   3. Resolving the level of ordinary skill in the pertinent art.
   4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 15-17, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fosdick, titled "VM/CMS Handbook for Programmers, Users and Managers" in view of Official Notice.

As per claim 15, Fosdick teaches a method of insulating an operating environment (pg. 13, figure 2.2,(b) mainframe hardware monitoring virtual machine) emulator (pg. 13, figure 2.2,(b) plurality of virtual machines) from a host computer (pg. 13, figure 2.2,(b)mainframe hardware as the host computer), the method comprising; connecting a memory device to a host computer (pg. 13, figure 2.2,(b)mainframe hardware as the host computer) having an original operating system (the OS within the mainframe/host computer, pg. 13,figure 2.2)and a host processor, wherein the original operating system (the OS within the mainframe/host computer, pg. 13,figure 2.2)is executing on the host processor; selecting a secondary operating system to be emulated from multiple emulated operating systems available on the memory device; selecting a secondary operating system emulator (pg. 13, figure 2.2,(b) plurality of virtual machines) from a plurality of secondary operating system emulators (pg. 13, figure 2.2,(b) plurality of virtual machines), wherein the selected secondary operating system (pg. 13,figure 2.2 (b) any one of the virtual machines)emulator (pg. 13, figure 2.2,(b) plurality of virtual machines) comprises instructions configured to emulate the secondary operating system using the original operating system (the OS within the mainframe/host computer, pg. 13,figure 2.2)and the host processor; executing the selected secondary operating system (pg. 13, 2nd paragraph) emulator (pg. 13, figure 2.2,(b) plurality of virtual machines) on the host processor and original operating system (the OS within the mainframe/host computer, pg. 13,figure 2.2)of the host computer (pg. 13, figure 2.2,(b)mainframe hardware as the host computer); disabling host task management on the original operating system; routing input/output signals (pg. 15, figure 2-4 the control

program integrating the host machine or mainframe hardware to the virtual machine) only through the emulated operating system(pg. 13, 2nd paragraph);

But Fosdick fails to teach shutting down or disabling the emulated operating system.

Official notice is taken since the limitation "of activating an environmental shutdown by disabling the emulated operating system in response to interactions between the original operating system and the emulated operating system", was well known at the time of invention was made in the analogous art of Fosdick. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art for a user to virtually or physically disconnect a guess computer from the host computer as a matter of choice. The motivation to do so would have been "efficient at controlling online terminals, and because it provides certain programming compatibility features with many of the other operating systems that may run as guest in the VM environment" (pg.15, 3rd paragraph, lines 3-6). Therefore, it would have been obvious to modify Fosdick to obtain the invention as specified in claims 15-17.

Claim 16. The method of claim 15, wherein disabling further comprises completely isolating the host computer (pg. 13, figure 2.2,(b)mainframe hardware as the host computer).

Claim 17. The method of claim 15, wherein disabling further comprises allowing a user to define allowed interactions between the host computer (pg. 13, figure 2.2,(b)mainframe hardware as the host computer) and the emulation device.

Claim 21. The method of claim 15, wherein the selection is based on a type of the original operating system (the OS within the mainframe/host computer, pg. 13,figure 2.2) and a type of the host processor(pg. 13, figure 2.2,(b) mainframe hardware as the host computer; processor located inside the computer).

Claim 22. The method of claim 15, further comprising: routing input/output signals only through the emulated operating system(pg. 13, figure 2.2,(b) plurality of virtual machines).

Section II: Response to Arguments

6. Applicant's arguments filed 08/07/2009 have been fully considered, however, the argument that Fosdick teaches away from the invention is not persuasive. As stated by MPEP 2131.05 [R5] ***(emphasis added)***:

"Arguments that the alleged anticipatory prior art is nonanalogous art' or teaches away from the invention' or is not recognized as solving the problem solved by the claimed

invention, [are] not germane' to a rejection under section 102." Twin Disc, Inc. v. United States, 231 USPQ 417, 424 (Cl. Ct. 1986) (quoting In re Self, 671 F.2d 1344, 213 USPQ 1, 7 (CCPA 1982)). See also State Contracting & Eng ' g Corp. v. Condotte America, Inc., 346 F.3d 1057, 1068, 68 USPQ2d 1481, 1488 (Fed. Cir. 2003) (The question of whether a reference is analogous art is not relevant to whether that reference anticipates. A reference may be directed to an entirely different problem than the one addressed by the inventor, or may be from an entirely different field of endeavor than that of the claimed invention, yet the reference is still anticipatory if it explicitly or inherently discloses every limitation recited in the claims.).

A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it. The question whether a reference "teaches away" from the invention is inapplicable to an anticipation analysis. Celeritas Technologies Ltd. v. Rockwell International Corp., 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir.1998) (The prior art was held to anticipate the claims even though it taught away from the claimed invention. "The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed."). >See Upsher-Smith Labs. v. Pamlab, LLC, 412 F.3d 1319, 1323, 75 USPQ2d 1213, 1215 (Fed. Cir. 2005)(claimed composition that expressly excluded an ingredient held anticipated by reference composition that optionally included that same ingredient);< see also Atlas Powder Co. v. IRECO, Inc., 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed.Cir. 1999) (Claimed composition was anticipated by prior

art reference that inherently met claim limitation of "sufficient aeration" even though reference taught away from air entrapment or purposeful aeration.).

In response to applicants request by way of MPEP 2143.03, the Office believes that the user has interaction the CP environment. Specifically, on page 12, 3rd paragraph, Fosdick states**(emphasis added)**, [T]the hardware resources comprising each of these virtual machines is under the control of the CP and, **ultimately, under the control of the system administrators of the VM-based system**." Logically, this "environment shutdown" is the virtual machine environment (system), by which the system administrator or user/users have complete control of the system, thus would have to include shutting down the system. Rejection is maintained.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure:

- US Patent 5202976 discloses a method and apparatus for coordinating measurement activity upon a plurality of emulators.

8. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Tom Stevens whose telephone number is 571-272-3715.

If attempts to reach the examiner by telephone are unsuccessful, please contact examiner's supervisor Mr. Albert Decady (571-272-3819). The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov.. Answers to questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) (toll-free (866-217-9197)).

/Thomas H. Stevens/

Examiner, Art Unit 2121

/Ramesh B. Patel/

for Albert Decady, SPE of Art Unit 2121